company the right to change the grade of the pike, but only provides that a just compensation shall be made for the damages resulting therefrom.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 88.]

18. Eminent Domain (§ 275 (2)*)—Injunction; Insignificant Damages.—Where a toll road company, in constructing a bridle path on a strip dedicated to it by landowners, cuts its land down in some places in such a manner as to remove the support for the adjacent land and of fences lawfully erected thereon, the landowner is not entitled to enjoin the construction of the bridle path where the damage is insignificant and can be readily compensated in damages.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 117.]

19. Eminent Domain (§ 274 (1)*)—Restraining Taking Private Property for Public Use.—Usually injunction is the proper remedy to prevent the taking of private property for a public use by one who is invested with the power of eminent domain.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 117.]

20. Eminent Domain (§ 275 (2)*)—Restraining Change of Grade by a Toll Road Company.—Where a toll road company, to which land was dedicated for a turnpike, went beyond the purpose of the dedication and attempted to construct a bridle path along said turnpike, within the strip dedicated, but on a different grade so as to damage adjacent proprietors, its construction will not be enjoined; the proposed change standing on no higher footing than trespass, for which an action at law may be maintained.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 117.]

Appeal from Circuit Court, Bath County.

Suit by Jos. F. Lowman against the Virginia Hot Springs Company. Decree for plaintiff, and defendant appeals. Reversed, and bill dismissed.

Allen & Walsh, of Charlottesville, and *J. T. McAllister,* of Hot Springs, for plaintiff in error.

J. M. Perry, of Staunton, and *J. W. Stephenson & Son,* of Warm Springs, for defendant in error.

LAVENSTEIN BROS. *v.* HARTFORD FIRE INS. CO.

June 12, 1919.

[101 S. E. 331.]

1. Insurance (§ 665 (1)*)—Fire Insurance—Inventory—Sufficiency of Evidence.—In action on fire policy insuring stock of goods, evi-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

dence held to show that inventory taken February 1st did not include purchases by insured during preceding January.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 123.]

2. Insurance (§ 335 (2)*)—Fire Insurance—Inventory—Sufficiency.—The taking of an inventory on February 1st, without including purchases by insured during preceding January, was not a violation of fire policy requiring a complete itemized inventory of stock on hand, where the invoices of all such purchases were preserved in an invoice book, and were shown in detail as fully as would have been shown by inventory.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 85.]

3. Insurance (§ 335 (2)*)—Fire Insurance—Inventory of Stock of Goods—"Complete Itemized Inventory."—Fire policy, requiring insured to make "complete itemized inventory of stock on hand," did not require insured, in making inventory, to record the stock numbers of the items of goods or other data touching the identity of the items, in order that such goods could be traced to the former inventories, to invoices of them, or the like.

[Ed. Note.—For other definitions, see Words and Phrases, Second Series, Complete Inventory. For other cases, see 6 Va.-W. Va. Enc. Dig. 85.]

4. Insurance (§ 335 (2)*)—Fire Insurance—Inventory—Stock of Goods.—Under fire policy requiring insured to make a complete itemized inventory of stock of goods on hand, inventory grouping goods of different kinds in one item designated as dress goods, at certain prices per yard, was not invalid, where the goods were of the same value per yard, and existed in the quanity stated in inventory.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 85.]

5. Insurance (§ 335 (2)*)—Fire Insurance—Stock of Goods—Inventory.—Inventory of stock of goods taken pursuant to fire policy, in an amount more than $90,000, was not invalid because of lumped entries, such as "1 lot jewelry, $10.00," where such entries were few in number.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 85.]

6. Appeal and Error (§ 204 (1)*)—Objections to Evidence—Waiver.—Objections to admission of evidence will be treated as waived in appellate court, where not raised in lower court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 560.]

7. Insurance (§ 335 (2)*)—Fire Insurance—Inventory—Branch Store.—Fire policy on stock of goods, requiring insured to take inventory of the goods, did not require insured to take inventory of stock of goods in a branch store in another city, conducted as a sep-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

arate line of business, where such stock of goods was not covered by the policy.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 85.]

8. Insurance (§ 335 (3)*)—Fire Insurance—Stock of Goods—Books of Insured.—Fire policy on stock of goods, requiring insured to take inventory and keep a "set of books which shall clearly and plainly present a complete record of the business transacted, including all purchases, sales, and shipments * * * from date of inventory," did not require insured's books to record the original purchases of all goods at the branch stores of the insured for period of time preceding taking of inventory, but merely such books as show record of business transacted from date of inventory.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 85.]

9. Insurance (§ 665 (3)*)—Fire Insurance—Books of Insured—Sufficiency of Evidence.—In action on fire policy, evidence held to show that insured complied with provision of policy requiring them to keep a set of books clearly and plainly presenting a complete record of business transactions from date of inventory.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 123.]

10. Insurance (§ 660*)—Fire Insurance—Profits of Insured.—In action on fire policy in stock of goods requiring insured to take inventory and keep books showing business transacted from date of inventory, insured was not required to show profits for a year preceding the taking of inventory, by books for such period, but could establish such profits by any competent evidence.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 85.]

11. Insurance (§ 330 (2)*)—Fire Insurance—Stock of Goods—Chattel Mortgage—Collateral Security Note.—Insured's note, in the usual form of a negotiable collateral security note, did not violate provision of policy making policy void upon incumbering goods with chattel mortgage; such note being insufficient to create a chattel mortgage.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 78.]

12. Insurance (§ 328 (6)*—Fire Insurance—Ownership of Goods—"Unconditional and Sole Ownership."—Insured's note, in the usual form of a negotiable collateral security note, making stock of goods covered by policy collateral for payment of note, did not invalidate policy under provision making it void if the interest of insured in goods be other than "unconditional and sole ownership"; the execution of such note not depriving insured of the unconditional and sole ownership of the property, even though note should be construed as creating a chattel mortgage.

[Ed. Note.—For other definitions, see Words and Phrases, First

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and Second Series, Unconditional and Sole Ownership. For other cases, see 6 Va.-W. Va. Enc. Dig. 78.]

13. Insurance (§ 553 (1)*)—Fire Insurance—Proof of Loss—False Statements.—False swearing in proof of loss, to forfeit policy, must consist in an oath to statements knowingly and willfully false or recklessly made.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 103]

14. Appeal and Error (§ 1060 (1)*)—Harmless Error in Restricting Argument.—Error in unduly restricting argument of appellant's counsel on the evidence relating to a certain fact is harmless, where the evidence conclusively establishes such fact contrary to appellant's contention.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 599.]

Burks, J., dissenting.

Error to Hustings Court of Petersburg.

Action by Lavenstein Bros. against the Hartford Fire Insurance Company. Judgment of dismissal, and plaintiffs bring error, and defendant assigns cross-error. Reversed.

R. H. Mann, of Petersburg, and *Henry J. Wyatt,* of New York City, for plaintiffs in error.

Caskie & Caskie, of Lynchburg, and *R. E. Scott,* of Richmond, for defendant in error.

JOHNSON *v.* COMMONWEALTH.

Nov. 20, 1919.

[101 S. E. 341.]

1. Criminal Law (§ 941 (2)*)—Newly Discovered Evidence Not Merely Cumulative Justifies New Trial.—Testimony of a garage keeper that he searched automobile in which liquor was charged to have been transported on the night in question while repairing a tire, but that he saw no liquor, held not merely cumulative, but, even if so considered, to entitle defendant to a new trial, since it was testimony of a disinterested witness in support of defendant alone and was discovered after trial.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 449.]

2. Criminal Law (§ 941 (2)*)—"Cumulative Evidence" No Ground for New Trial.—Evidence is said to be cumulative when it is of the same kind, to the same point, and the discovery of such evidence after verdict is as a rule no ground for a new trial.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 449.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.